Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

NO. 80-672

IN THE
SUPREME COURT
OF THE UNITED STATES

YUN CHI FOXX,

Petitioner,

vs.

REDD FOXX,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Attorney for Respondent
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QUESTION PRESENTED

Whether the Petition of YUN CHI FOXX presents a federal question.

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STATEMENT OF THE CASE

In November of 1979, REUD FOXX filed a Complaint for Divorce against his wife, YUN CHI FOXX, in the Eighth Judicial Court of the State of Nevada. At the time of the filing of his Complaint, MR. FOXX had lived in Las Vegas for more than six weeks, the period of residency required by Nevada law to obtain a Nevada divorce. NRS 125.020.

The Summons and Complaint for divorce was served upon MRS. FOXX in Las Vegas. Within days, MRS. FOXX commenced her own suit for divorce in California. That action was stayed by the California court pending action by the Court in Nevada. Shortly prior to

the trial that was scheduled for June 9, 1980 in Nevada, MRS. FOXX filed a motion with the Nevada court to dismiss MR. FOXX'S action on the ground of forum non conveniens. When the trial court denied the motion, MRS. FOXX filed a petition for Writ of Prohibition, or in the alternative, for a Writ of Mandamus with the Nevada Supreme Court. Pending resolution of that petition, the trial was stayed.

On September 5, 1980, the Nevada Supreme Court denied MRS. FOXX'S petition. The Nevada trial court then scheduled a trial for October 27, 1980. On October 27, 1980, MR. FOXX, through his attorney, received MRS. FOXX'S petition for Writ of Certiorari filed with the Supreme Court of the United States. Once again, the trial of

MR. FOXX'S Complaint for Divorce was stayed by the Nevada court.

In her Petition filed with the Supreme Court of the United States, MRS. FOXX has alleged that her rights under the Fifth Amendment to the Constitution of the United States have been violated by the Nevada court's refusal to dismiss MR. FOXX'S Complaint for Divorce. The doctrine of forum non conveniens, she contends, requires that the case be dismissed. She alleges that MR. FOXX has forum shopped and has brought his action for Divorce in Nevada only to vex and harass her. MR. FOXX, she claims, has no substantial contacts with the State of Nevada.

Actually, both she and MR. FOXX have substantial contacts with the State of Nevada. MRS. FOXX came to the

United States from Korea in 1974. She lived for three months in California and then moved to Las Vegas, where she obtained employment at the Las Vegas Hilton Hotel's Benihana restaurant. This employment commenced in September or October of 1974 and lasted until August of 1976. During this period of time, she sought and obtained a divorce in Las Vegas, Nevada from her Korean husband. She met MR. FOXX in August of 1976 and they married in December of that year in Las Vegas, Nevada. Prior to the marriage an antenuptial agreement was prepared in California. It was executed in Las Vegas, however, and MRS. FOXX was represented by a Las Vegas attorney at the time of the execution.

After their marriage, the parties lived in Los Angeles and in Las Vegas.

When the Sanford and Son television series in which MR. FOXX starred was discontinued in 1977, the parties' principal residence became Las Vegas. From then until the time of the filing of the divorce, MR. FOXX was employed almost exclusively at the Silverbird and Landmark casinos in Las Vegas, Nevada. The parties lived in MR. FOXX'S home that he owns on Eastern Avenue in Las Vegas.

Some time after he filed the Complaint for Divorce in Nevada, MR. FOXX contracted to do a new television series to be shot in California entitled "Sanford." The shooting of this series ended in the late spring of 1980. MR. FOXX again returned to Las Vegas to live and to perform at the Hacienda hotel and casino.

ARGUMENT

THE DECISION OF THE NEVADA COURTS NOT TO APPLY THE DOCTRINE OF FORUM NON CONVENIENS IS NOT CONSTITUTIONAL IN NATURE AND PRESENTS NO FEDERAL QUESTION.

The doctrine of forum non conveniens has never been adopted by the Supreme Court of Nevada. In State vs. Second Judicial District Court, 79 Nev. 414, 385 P.2d 772 (1963) the Nevada court specifically declined to adopt the doctrine. Although the Nevada court recognized that the doctrine has application of the courts of the United States, it found it unnecessary to adopt it in Nevada. Since the Nevada court's decision in that case, the Nevada court has had one additional opportunity to rule on the propriety of the doctrine in Nevada. In the case of Buckholt vs. Second

Judicial District Court, 94 Nev. 631, 534 P.2d 672 (1978), the Nevada court reversed a trial court's action dismissing a complaint on the basis of forum non conveniens. The doctrine, the Nevada court ruled, was simply not applicable.

The doctrine of forum non conveniens means simply that when a court has both jurisdiction and venue, it may, at its discretion, decline to exercise its jurisdiction for the reason that some other court, which also has jurisdiction, may be a more appropriate forum in which to try the matter. Gulf Oil Corp. vs. Gilbert, 303 U.S. 501, 67 S.Ct 839, 82 L.Ed. 980 (1947). The doctrine of forum non conveniens is not constitutional in nature. Whether

a state accepts or rejects the doctrine of forum non conveniens, and whether, if it does accept the doctrine, it applys it, are questions of state law not open to review by the federal courts. State of Missouri ex rel. Southern Ry Co. vs. Mayfield, 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed. 3 (1950).

Nowhere in her petition does MRS. FOXX state how it is that the refusal of the State of Nevada to dismiss MR. FOXX'S divorce proceeding constitutes a violation of her rights under the Fifth Amendment to the United States Constitution. The doctrine of forum non conveniens, upon which she predicates her petition before this court, is not a matter of constitutional dimension. State of Missouri ex rel. Southern Ry Co. vs.

Mayfield, supra. Given this fact, there is no reason that this court should grant certiorari. U.S. Sup. Ct. Rule 17, 28 U.S.C.A.

CONCLUSION

MR. FOXX has shown that both he and MRS. FOXX have substantial contacts with the State of Nevada. He has neither forum shopped nor harassed MRS. FOXX by filing for divorce in Nevada. While it may be more convenient for MRS. FOXX to have the matter tried in Los Angeles, it is more convenient for MR. FOXX to have the matter tried in Las Vegas. This conflict in convenience does not warrant action by the Supreme Court of the United States.

DATED this 26th day of November, 1980.

FRANK J. CREMEN, ESQ.

Attorney for Respondent,
REDD FOXX

CERTIFICATE OF MAILING

I, DEANNA BEANS, do hereby certify that on the 3rd day of December, 1980, three true and accurate copies of the BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI was placed in the U.S. Mails, postage prepaid and mailed to this address:

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